IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CRIMINAL JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 7345 OF 2005

1. Mr. Ibrahim Abdul Latif
Supediwala alias
Lokhandwala.
2. Mrs. Shamim Ibrahim Latif
Supediwala alias Lokhandwala ..Applicants

Versus

The State of Maharashtra,
at the instance of Khalapur
Police Station, Dist. Raigad,
Maharashtra. .. ..Respondent

Smt. Manjula Rao with Shri. V. V. Palnitkar and Ms Kokila A. Kalra, Advocates, for the Applicants.

Shri. S. S. Tatkare, A. P. P., for the State.

Shri. S. I. Memon, Advocate, for the Intervener-Bank.

CORAM : S. C.DHARMADHIKARI, J.
DATE : NOVEMBER 16, 2005

P. C.

. On 9.11.2005, when this matter was mentioned before me, I had, after hearing Smt. Rao for the Applicant, Shri. Patil for the State and Ms Baiga for the Intervenor, protected the applicant till today on the conditions as imposed in the order dated 9.11.2005. Today, the anticipatory bail application is heard. The learned A.P.P. has placed for my perusal the relevant material. The Investigating Officer is present. The

Intervenor -Bank is represented by Shri. Memon.

2. The complaint was lodged with the Khalapur Police Station bearing C.R. No. 31/2005 alleging offences punishable under sections 406, 420, 465 and 467 of the Indian Penal Code. The complaint is by one Arif Mohamad Gaswala as a manager of Memon Co-operative Bank, Nagpada Branch, Mumbai. The applicants, who are senior citizens, along with their sons, are directors of Mek Resorts and Amusement Pvt. Ltd.

3. The said Mek Resorts and Amusement Pvt. Ltd. is a company incorporated and registered under the Companies Act, 1956 having its registered office at Thane. It is engaged in the business of resort cum amusement park. The complainant further alleges that the lands/immovable property which are utilised for conducting and managing this business belong to the company. These lands have been mortgaged in consideration of the financial/credit facilities extended during the course of the business. The mortgage is created in November 1994. Further facilities till the year 2000 have been availed of and now a sum of Rs. 2,84,00,000/= is due and payable.

4. It is further alleged that out of the several

survery numbers, survey numbers 79/7, 79/8, 79/10 have been disposed of. The transactions pertaining to the same are of the year 1997. It is alleged that the Bank was not aware of this sale. The sale is illegal inasmuch as all the documents, including the title-deeds, have been deposited with the Co-operative Bank in question. Shri. Memon states that it is an *inter se* mortgage. He states that the sale has been conducted behind the back of the Bank and the docucments purportedly evidencing them are false and bogus. The Bank was not aware of these transactions until its representative visited the said amusement park at which time it was discovered that a compound wall was erected by the so called purchasers.

5. In these circumstances, it is alleged that offences under the aforesaid provisions have been committed.

6. Smt. Rao appearing in support of the application, firstly, contends that the property belongs to the conmmapy. The company has availed of the facilities. The directors have guaranteed the repayment. However, it is her contention that the Co-operative Bank itself has disposed of several properties out of the mortgaged properties and recovered as well as appropriated a sum of Rs. 3,30,00,000/=. She submits that the case as

put up is totally false inasmuch as none of the ingredients of the provisions are attracted. The dispute, if at all any, is purely civil in nature.

7. She further submits that the sons of the applicants have been arrested in connection with the same allegations and are presently enlarged on bail by the regular Court. She states that as senior citizens, the applicants were protected throughout. They have not violated any of the conditions imposed by the Sessisons Court. She submits that the entire case is based on documents which are in the custody of the Bank. In any event, the applicants shall extend all co-operation. The applicants are agreeable to handover any further docucments pertaining to the transactions with the Bank and the third party. She states that the applicants will attend the Police Station and, in fact, have been so attending even during the pendency of the application. For all these reasons, she submits that the application be granted.

8. Shri. Tatkare, the learned A.P.P., as well as Shri. Memon, who intervened, pointed out that the mortgage security could not have been disposed of in the manner in which it was done. This is a case where fraud has been perpeptrated upon the Bank and the

docucments evidencing the transactions are false and fabricated. The Bank has been cheated inasmuch as monies belonging to the shareholders were handed over in trust for the specific purpose and use of the company. In these circumsmtances, it is a serious case and the amount is to the tune of Rs. 3,00,00,000/= . The applicants are not entitled to any reliefs and the application be, therefore, dismissed.

9. In the light of the fact that the dispute pertains to the rights of the internvenor - Bank in an immovable property, it is clearly civil in nature. The Bank, having appropriated and adjusted the amount by disposal of some of the properties mortgaged, is now purporting to recover the balance, and in the course of the same alleging that it was unaware of the transactions which took place in the year 1997. That apart, the applicants have handed over all the documents. The Bank has, admittedly, on the strength of the same, disposed of some of the survey numbers. The Bank has proceeded to dispose them of as the owners. Hence, the entire sale proceeds are appropriated and now only a sum of Rs. 20,00,000/= is balance in respect of the three accounts. The applicants are senior citizens. Their sons, who are also directors, were arrested and are presently enlarged on bail. The applicants are

willing to handover the additional documents and also co-operate in the investigation. It is not necessary to detain them in custody. The First Information Report does not disclose as to how merely because the mortgaged properties have been disposed of, the sale by itself is an act of deceit or fraud. **Prima facie**, therefore, my observations are substantiated by the actions of the Bank. In the light of the aforesaid, the following order is passed.

(i) In the event of their arrest in conection with C. R. No. 31/2005 of the Khalapur Police Station, each of the the applicants shall be enlarged on bail of Rs. 1,00,000/= with one one cash surety to be furnished within two weeks' time.

(ii) The bail is granted subject to the condition that the applicants will attend the concerned Police Station on every Monday and Thursyday, between 10 A. M. and 2 P. M.

(iii) The Bail is granted subject to the condition that the applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted

with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The applicants shall not tamper with the Prosecution evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefits of the Applicants only till chargesheet is filed. Thereafter he/she will be free to apply to the appropriate Court for appropriate relief.

(vi) Application is disposed of in the above terms.

(vii) The parties to act upon an authenticated copy of this order.

(S. C. Dharamadhikari, J.)